

# QUARTERLY REPORT

MISSISSIPPI REGULATORY COMPLIANCE GROUP

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## SPECIAL PROGRAM ON LOAN PRICING ANALYSIS

At the last few Quarterly Meetings, we have focused on the latest “hot button” in compliance, the issue of loan pricing and possible discrimination in lending.

Many of you will recall the presentation by Everett Fields, the Fair Lending Specialist for the FDIC Dallas Region, in which Everett gave us an insight into the approach that the FDIC uses when reviewing a bank’s Home Mortgage Disclosure Act (“HMDA”) data in light of the analysis that data is given by the Federal Reserve Board in Washington.

Everett shared with us that the regulators focus on each year’s HMDA data and look for “outliers,” as he called them. These are the HMDA reporting banks that produce the higher number of incidents of “rate spreads” reported and the most significant size of rate spread variance. (Remember that a rate spread exists any time that the APR on a HMDA-reported loan exceeds the comparable T-Bill rate for the loan term plus three percentage points if the loan is a first lien loan or five percentage points if the loan is a second or subordinate lien loan.)

He also admonished all compliance officers to have a frank conversation with management about the existence of rate spreads and the manner in which the bank prices its loans.

Since banks began reporting rate spreads in 2004, Butler Snow has helped a number of outlier banks to prepare their responses to the set of inquiries that the regulators have developed on the subject of loan pricing.

In doing so, we have come to a couple of conclusions. First, banks do not intentionally discriminate in their loan pricing. No surprise there. Virtually every bank’s loan policy says

that the bank makes every attempt to avoid even the appearance of discrimination. But, second, we have also learned that in many instances banks really don’t understand the method(s) that they use to price loans.

As you know, the HMDA-LAR contains only a limited amount of information (including the pricing information) about those loans reported. A great deal of additional information goes into the underwriting of these loans. Credit score, LTV ratio, debt-to-income ratio, term of the loan and collateral type are only some of the additional criteria that can affect pricing. Our experience has been that when you combine these factors with the reported HMDA data, what appears at first impression to be a possible case of discrimination turns out to be not so.

But the trick lies in having a policy that says that the bank underwrites and prices its loans based on that set of criteria which proves non-discrimination, and then having sufficient documentation in the loan file to show that the bank consistently collects and relies upon those criteria.

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At the upcoming Quarterly Meeting, we plan to present a special program, with the assistance of Brandon Roberts of Premier Insights, Inc., that will help compliance officers begin the process of examining with management the pricing policies and strategies that their bank uses.

To do this, Brandon has taken the HMDA data reported by all Mississippi and Tennessee banks for the years 2004, 2005 and 2006 and compiled them into a chart which ranks each bank. A number will be assigned (instead of a name) for each bank and all banks will be ranked by state from highest to lowest in terms of their Z score (the size of their rate spread variance) and their Z2 score (the incidents of reported rate spread), which are two of the primary criteria the regulators use when identifying so called "outlier" banks.

In addition, the chart will display the percentage of reported rate spreads by race and the average rate spread for each race for every bank. You will recall that Everett Fields explained that a difference of .15% in reported incidents of rate spread between white and black customers, or a difference of more than .5% in the average rate spread charged to white versus black customers, will be cause for regulators to discuss with management the manner in which the bank prices its loans.

Each bank that takes part in this program will be given a sealed envelope that identifies their bank by number so that they can identify their position on the list and the particular scores and percentages that apply to their bank in a confidential manner.

This exercise will provide compliance officers with the facts, backed by three years of reported statistics, that will enable them to begin the pricing dialogue with management.

This project has required much time and effort on the part of Brandon Roberts. He has graciously offered to make this preliminary assessment available to each reporting bank, on a confidential basis, for a charge of \$150 which covers an analysis of all three reporting years, 2004, 2005 and 2006. You will be asked to indicate on your Quarterly Meeting registration form whether you wish to receive this data at the meeting and are willing to pay Brandon the \$150 charge.

I am certain everyone remembers Everett Fields telling us that 13 banks in Mississippi alone were classified as "outliers," but that only six banks received letters. The remaining seven banks are outliers nonetheless, but will be reviewed as part of the regular fair lending exam process, simply because the FDIC lacks the manpower to conduct 13 special reviews in a single state. Until now we have sympathized with the banks that received one or more of the letters of inquiry from the FDIC, but this revelation makes you wonder if those banks are not fortunate in one respect: they know that they have been identified for special scrutiny and can prepare. The remaining unidentified seven banks may be due for the same scrutiny somewhere down the road, but may not know it. This program is your chance. We hope every bank takes part.

<Ed Wilmesherr>

## HUD PROPOSES RESPA REVAMP

In March, HUD announced a sweeping proposal to re-write RESPA regs and make dramatic changes to GFE and HUD-1/1A disclosures. If adopted, the proposal would create a new trigger time for delivering the GFE and a new, four-page, required GFE form. It would also create a tolerance for accuracy of amounts disclosed in the GFE and revise the HUD1/1A form so that

borrowers can easily compare fees on this form with amounts disclosed in the GFE. Yield spread premiums paid to a broker would have to be fully disclosed in the GFE, and the GFE would also include a summary of key loan terms in addition to settlement costs. A required closing script explaining settlement costs and loan terms would be mandatory at loan closings. Other

changes include revision of the Servicing Transfer Disclosure to conform to statutory changes.

There are several objectives behind HUD's proposal. One is to allow consumers to obtain multiple GFEs containing more detail on loan terms and closing costs in order to shop for the best terms. Another objective is to provide more accurate disclosures and a closing script to help ensure borrowers have a clear understanding of loan terms. Both are admirable goals, but the result will be a more complicated application and closing process with a greater risk of liability for lenders if the rules are adopted as proposed. Let's look at some specifics.

Good Faith Estimate. The proposal would replace the current one page suggested form with a required four page standardized form which must be given to the applicant within three days after the lender receives a "GFE application." The proposal creates the concept of a "GFE application" and defines it as receipt of enough basic information to arrive at a preliminary credit decision, including name and social security number, property address, gross monthly income, the house price or borrower's best estimate of property value and the amount of the loan sought. The GFE application appears to fall somewhere between a pre-qualification and a complete application and it is unclear how this would be treated for purposes of the HMDA-LAR, ECOA notices, or early Reg. Z disclosures.

The new GFE would provide a summary of the loan terms on page one including loan amount, term, initial interest rate, monthly payment amount, whether the rate, balance or payment amount may increase, whether there is a balloon payment or prepayment penalty, and whether the loan includes escrows for taxes and insurance. Total settlement costs would be disclosed on page 2 and grouped into two basic categories: the lender's charges and charges for other settlement services. The category for lender's charges is called "Your Adjusted Origination Charges" and includes the lender and brokers charges for processing and underwriting (called "Our Service Charge") and any "credit" or

"charge" for the interest rate chosen. Points would be a "charge" that increases up front origination charges. A yield spread premium paid by the lender to a broker would be shown as a "credit" which would reduce total origination charges.

Settlement costs paid to others would be disclosed under the heading "Your Charges for All Other Settlement Services" in blocks for: (1) required services selected by the lender (e.g. credit report and appraisal but excluding title); (2) title services and lender's title insurance; (3) required services the borrower can shop for (e.g. closing attorney) with an estimated amount for each service and a total for all; (4) recording and transfer charges; (5) total reserves escrow for taxes and insurance; (6) per-diem interest; (7) homeowners insurance; and (8) optional owner's title insurance; followed by a total for "All Other Settlement Charges" and a grand total for "Total Estimated Settlement Charges."

Additional interest rate options would be disclosed on page 3. The lender would be required to provide two additional loan options, one with a higher interest rate and one with a lower rate, in a chart format in order to disclose to the borrower the potential impact on settlement costs that may result from choosing a loan with a different interest rate. Page four of the GFE would contain a blank chart consumers may use to write in loan terms from different lenders in order to comparison shop. Page 4 also includes estimates for additional costs such as property taxes, homeowner's and flood insurance and homeowner's association or condo fees and would include a warning that those amounts are estimates only and should not be used for comparison shopping purposes.

Tolerances. For the first time, amounts disclosed in the GFE would have to be accurate within a specified tolerance. The proposal would create three categories of settlement charges with different tolerances for each. Zero tolerance fees include the lender's own charges for underwriting or processing, any credit or charge to the borrower for the interest rate chosen (i.e. any yield spread premium or points) and recording fees. A second category would be

subject to a 10% tolerance level. The cost of individual items could vary but the actual total for all costs in the category could not increase at closing by more than 10% from the amount shown on the GFE. Costs in this category include lender-required settlement services where the lender chooses the provider (e.g. appraisal, credit report, etc.); lender-required services where the borrower can choose from an approved list (e.g. title and lender's title insurance), and optional owner's title insurance when the borrower uses a provider recommended by the lender. Fees not subject to any tolerance level for accuracy include estimated escrows (e.g. taxes and insurance), daily interest charges, homeowner's insurance and any lender-required settlement service where the borrower is free to choose their own provider.

In essence, the GFE would no longer be an estimate, but would be more in the nature of a GFE "offer." The lender would be required to keep the GFE "offer" on settlement costs open for ten business days to allow the borrower to shop the terms. Barring "unforeseen circumstances" actual costs at closing could not exceed the amounts disclosed in the GFE plus the applicable tolerance. In describing the loan terms, the lender is required to specify a date until which the interest rate specified in the GFE will remain available, but until the rate is locked, the initial rate may continue to change. Also, if the borrower chooses a different loan product or a higher or lower initial interest rate, the lender would be required to provide a completely new GFE.

Yield Spread Premiums. Currently, yield spread premiums (YSPs) are required to be disclosed on the HUD-1 as fees paid to a broker outside of closing. The new proposal would require any YSP to be disclosed as a "Credit for the Specific Interest Rate Chosen" without using the term "yield spread premium." Direct charges by the lender or broker, such as an origination, underwriting or mortgage broker's fee, would be disclosed in the box for "Our Service Charge." Discount points would be a "charge" for the specific interest rate chosen. Any YSP would be

a credit, and the total of all would be disclosed as "Your Adjusted Origination Charges."

HUD-1. The proposal includes changes to the HUD-1. The lender or broker's direct fees would be grouped together and shown as "Our Service Charge" rather than separately itemized. Line items would also indicate the section of the GFE matching the HUD-1 disclosures. In addition the HUD-1 would require separate disclosure of the agent's portion of any title insurance premium.

Closing Script. The proposal includes a new addendum to the HUD-1, a closing script, which would be required to be read aloud to the borrower at closing and provided in writing with a written acknowledgment of receipt by the borrower. A specific format for the script would be required. The closing script compares the loan terms and costs on the GFE and HUD-1, explains whether costs are within applicable tolerances and describes the loan terms in detail.

Application and New Notices. If a consumer decides to pursue the GFE terms, he then submits his or her "mortgage application" which would include all information needed to underwrite the loan and to verify the information provided in the GFE application. Under the proposal, a borrower given a GFE could not later be rejected unless the rejection is based on final underwriting. The originator must complete final underwriting within a reasonable time after the mortgage application is complete. After final underwriting, a rejected borrower would have to be notified within one business day after the decision is made. If a borrower's initial GFE application is rejected and another loan product is available that the borrower could initially qualify for, the lender must provide the borrower with a GFE for that loan. All documentation for the rejection or changes to the GFE would have to be retained for at least three years.

Other changes would permit average cost pricing of some settlement services, allow for discounts or incentives for using a specific service provider and permit electronic disclosures in compliance with E-Sign.

All in all, this is a sweeping proposal involving much more than the prospect of new disclosures. Not unlike HUD's proposal in 2002, it would also make dramatic changes to the application and closing process. It raises many new issues and, in some cases, takes a contradictory approach to issues addressed in the proposed HOEPA regulations recently issued by the Fed. Unfortunately, the proposed rules were issued with a short sixty day comment period which is set to expire on May 13. Your Steering Committee thought the issues raised by the proposal were important to all members and asked Butler Snow to prepare a form of

comment letter that each member could use to submit its own comments, with the cost to be shared by all members. We anticipate the cost to be no more than the cost of the HOEPA comment letter we prepared recently which was about \$56 per member. Unfortunately because of the short comment period, we won't have a chance to discuss the draft comment letter at the quarterly meeting before the comment deadline. Instead, we will prepare the draft and send it to each member in time for you to review it, make any changes you desire and email your letter to HUD by May 13.

<Cliff Harrison>

## **FINCEN PROPOSES REVISED CTR EXEMPTION REQUIREMENTS**

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On April 23, 2008, the Financial Crimes Enforcement Network ("FINCEN") published proposed revisions to certain of the current rules governing currency transaction reporting. The primary reason cited by FINCEN for these revisions is to encourage broader use of the Phase I and Phase II exemptions available to reporting institutions, and thereby reduce the volume of currency transaction reports that are not as useful for law enforcement purposes.

The proposed revisions target the following areas:

- (A) Eliminating the requirement to file exemption forms on, and to annually review, customers that are depository institutions, Federal, State, and local government agencies, and entities exercising government authority;
- (B) Eliminating the biennial renewal requirement on Phase II exemptions; and
- (C) Eliminating the 12-month requirement as a minimum length of time necessary to establish customer qualification for a Phase II exemption.

The proposed revisions do not change the current requirement for a Phase I exemption filing and annual review of companies and their

subsidiaries that are listed on a major national stock exchange.

One of the important elements of these proposed changes is the potential elimination of the requirement that, in order to qualify for a Phase II exemption, a customer must be required to have a transaction account with the institution for at least 12 months. The proposal requests comment as to whether there should be no minimum time period required for a transaction account relationship, in which case the regulations would require that each institution apply a risk-based standard to determine whether a customer may qualify for a Phase II exemption. The proposal also requests comments concerning an alternative which would require a transaction account relationship of no more than 2 months in order for a customer to qualify for a Phase II exemption.

The purpose of eliminating the current 12-month requirement for a transaction account prior to qualifying for the exemption is to reduce potentially unnecessary CTR reporting for a business customer that clearly would qualify for a Phase II exemption. FINCEN states in the proposed revised regulation that at the time the 12-month requirement was established in 1999, there was concern that the Phase II exemption qualifications might be too lax, however, with

the significant changes that took place in BSA following 2001, there is much greater responsibility placed on financial institutions, through the CIP process, to evaluate risk early in the customer relationship. This tends to mitigate the need for a transaction account relationship to be established for 12 months in order to assess need for a Phase II exemption.

In relation to the proposal to eliminate the Phase I exemption filing requirements for certain financial institutions and governmental entities, FINCEN cites GAO studies showing that in 2006 over 87,000 CTRs were filed on financial institutions and over 24,000 were filed on governmental entities. These CTRs usually are of little use to law enforcement, but institutions have elected to file the CTRs rather than engage in the process of filing for the exemption initially, and conducting the annual review. The revisions would eliminate the requirement to conduct an annual review for financial institution and governmental entities exempt under Phase I, but an annual review would continue to be required for Phase II customer exemptions.

The FINCEN proposal includes a revision that would eliminate the requirement to file for a Phase II exemption on a biennial basis. In lieu of this requirement, customers subject to Phase II exemptions would still be subject to an annual review process, as mentioned previously, and, in addition, the financial institution would be required to file a notice with FINCEN within 30 days of learning of a change in control of a customer exempt under Phase II. The institution

would then be required to file a renewal, similar to the biennial renewal, of the Phase II exemption if the customer has undergone a change in control. The final benefit suggested in the FINCEN proposal for eliminating the biennial renewal, is the fact that the institution would no longer be required to certify, as part of the biennial renewal, that monitoring the transactions of an exempt entity for suspicious activity have been applied as necessary in order for the entity to continue to qualify for the exemption. While the proposal states that in no way does this eliminate the obligation of the institution to monitor suspicious activity, it does eliminate an onerous requirement of the biennial renewal process, and may encourage more institutions to utilize Phase II exemptions.

As a whole, it is difficult to see where this proposal will significantly reduce the reporting and monitoring burden for financial institutions, particularly in regard to Phase II exemption customers. While the elimination of the 12 month relationship requirement and the biennial renewal requirement seem to help reduce burdens, the requirement for reporting a change in control of a Phase II customer creates an entirely new set of challenges.

Comments on this proposed revision are due within 60 days of publication, which will be in late June. We will continue to monitor the progress of the proposal.

<Virginia Wilson>

## **INTERAGENCY QUESTIONS AND ANSWERS REGARDING FLOOD INSURANCE ISSUED FOR COMMENT**

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The regulatory agencies published for comment proposed questions and answers regarding flood insurance in the March 21, 2008 Federal Register. Comments are due before May 20, 2008.

As we talked about at our February meeting, FEMA published its new "Mandatory Purchase

of Flood Insurance Guidelines" book, effective September, 2007, the first part of the year. The new book clarified numerous areas in the flood insurance purchase process, and now the regulatory agencies are providing 75 supporting Q & A's. Some of the "hot" areas include construction loans, second mortgages, and civil money penalties.

Remember first that the amount of flood insurance must be at least the lowest of:

- \* The outstanding principal balance of the loan(s);
- \* The maximum amount of coverage available under the National Flood Insurance Program for the type of building or structure; or
- \* The full insurable value of the building and/or its contents. In other words, the full replacement cost value!

Construction loans are always an area of contention between the lenders and operations personnel. The Flood Insurance requirements always require the lender to make a flood determination prior to loan origination and notify the borrower that flood insurance will be required [if the property is in a flood hazard area]. The question is when the insurance has to be in effect. There are two ways to do this, according to the “book.” The bank can require the borrowers to have a flood insurance policy in place at the time of origination. Of course, the exact amount of the insurance will not be known until the slab is poured, but the insurance company will adjust up or down, based on the determination. The second method is to allow the borrower to wait to purchase the flood insurance until the foundation slab is poured and an elevation certificate issued. The lender would then require the borrower to have flood insurance in place before they disburse funds to pay for building construction (other than the slab pouring or other preliminary site work). If the latter is the approach the bank wants to take, where flood insurance is not obtained at loan origination, the bank must have adequate controls in place at origination to ensure that the borrower obtains flood insurance no later than when the foundation slab has been poured and/or an elevation certificate has been issued.

That is a big must. It may be “cleaner” just to get the insurance before origination and let the insurance company make any adjustment after the slab is poured.

When a lender makes a second mortgage secured by a building or mobile home in a flood area, the lender must make sure that adequate flood insurance is in place or require that additional coverage be added to the flood policy for the combined total outstanding principal balance of the first and second loan, the maximum amount available, or the insurable value of the building or mobile home. So even if your bank does not have the first mortgage on the property, you must make sure that you have adequate coverage to cover both loans, not just obtain insurance on your second mortgage. We are all going to have to do a lot more checking! You may want to prepare a worksheet to capture the first and second mortgage amounts and the insurance (Yes, we will try to do this before our May meeting!).

What about discrepancies between the flood hazard determination on the flood determination form and the flood insurance policy? The information is clear that lenders should have a process in place to identify and resolve any discrepancies. So you need to get additional information from your vendor (if you use one) and the insurance company on how their determinations were made.

On mobile home loans, if the borrower does not know where the mobile home will be located before closing, the lender must advise the borrower that if the mobile home is later located on a permanent foundation in a flood hazard area, that flood insurance will be required. The lender should follow up with the borrower to see when it is eventually placed.

Question 72 in the proposal talks about the lender relying on a previous notice if it is less than seven years old and it is the same property, same borrower, and same lender. Remember that you may use the same Standard Flood Hazard Determination form if the loan is simply renewing. If the property is in a flood area and you are [for example] renewing the loan, you must give a NEW “Notice of Special Flood Hazards and Availability of Federal Disaster Relief” notice (the “participating/non-participating” notice). If the loan has paid off and you are making a new loan on the same

property later, you must start the review process over.

Finally, what violations of the Act can result in mandatory civil money penalties? Any pattern or practice of violation of any of the following items can trigger a mandatory civil money penalty:

- Purchase of flood insurance where available
- Escrow of flood insurance premiums
- Forced placement of flood insurance
- Notice of special flood hazards and the availability of Federal disaster relief assistance

- Notice of servicer and any change of servicer

The penalties have been raised to \$385 per violation with an annual ceiling of \$125,000.

You definitely want to make sure you are monitoring your loans located on improved property for all of the requirements.

Overall, the new book and proposed Q & A's are more "user friendly" than before and will provide us all with the tools we need to handle most situations. I'm sure we will talk more about these Q & A's at future meetings.

<Patsy Parkin>

## IDENTITY THEFT PREVENTION PROGRAM . . . TIME TO BEGIN

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Since our last Quarterly Meeting, a number of banks have inquired what the Bank Groups plan to do in terms of assisting the member banks in developing the Identity Theft Prevention Program and the supporting policies and procedures called for by the Interagency Final Rule Regarding Identity Theft Red Flags, recently adopted to implement Sections 114 and 315 of the FACT Act.

The Steering Committees of both Bank Groups have asked Butler Snow to begin a two-step process aimed at helping each bank develop its Program and supporting policies and procedures in time to have that Program reviewed and approved by management and the bank's board of directors before the November 1, 2008, mandatory compliance date.

Our plan is to utilize the resources of the two groups, coupled with Butler Snow's experience, to develop an outline or blueprint, if you will, of the steps in the process for developing an Identity Theft Prevention Program (the "Program"). Each bank's Program will need to draw on unique factors such as that bank's own experience with Identity Theft, so a one-size-fits-all Program is not feasible.

At the May Quarterly Meeting, we plan to present that outline or blueprint, along with examples of what some of the banks in the two groups have done to get started, coupled with a number of our own suggestions for developing the required Program.

The final goal is to be ready by the August Quarterly Meeting to develop a final, generic Identity Theft Prevention Program that can be distributed in Word format as an aid to helping each individual bank develop its own specific Program.

The following are only some of the issues we will need to address:

- Ways to identify relevant red flags and incorporate them in the Program;
- Methods for detecting red flags incorporated into the Program;
- Appropriate responses when red flags are detected; and
- Ways to ensure that the Program is updated to reflect changes in risks to customers or to

the safety and soundness of the bank, related to identity theft.

Sources of information to be consulted and incorporated into a bank's Program include:

- The bank's existing Information Security Program;
- The bank's existing CIP policy;
- The bank's experience with instances of identity theft;
- The bank's experience with Suspicious Activity Reporting;
- Any security procedures the bank has in place to monitor fraud activity;
- A comprehensive analysis of the types of "covered accounts" the bank currently has;
- A mechanism for incorporating new products and services (potential new "covered accounts") into the Program as they may be offered;
- An analysis of the various Red Flags listed in Supplement A to Appendix J of the Red

- Flags Guidelines for possible inclusion in the bank's own Program;
- The necessity/feasibility of combining the three-part requirements of the Red Flags Guidelines to include not only the Program, but also the response to a notice of address discrepancy in a credit bureau report and the procedures for handling change of address notification that is followed by a request for a new access device for a covered account.

Reviewing this partial list, it becomes apparent that while each bank's Program must satisfy the same requirements, each bank's Program will also be quite different. With a group effort, we should be able to provide guidance and structure to the process, thereby jump-starting each bank's Identity Theft Prevention. Come to the May Quarterly Meeting with your thoughts, your questions and perhaps with your own first draft of an Identity Theft Prevention Program. This truly needs to be a two-Bank Group effort.

<Ed Wilmesherr>

## MISSISSIPPI LEGISLATORS ADJOURN

The Mississippi Legislature ended their 2008 Regular Session and headed home April 18. The session resulted in passage of several new laws of particular interest to banks operating in the state, including:

Lender Name Fraud - HB 880: This act prohibits the use of a lender's name or trademark or publicly available loan information to solicit business unless the solicitation also discloses the name, address and telephone number of the person making the solicitation, that the person making the solicitation is not affiliated with the lender, the solicitation is not authorized or sponsored by the lender and the loan information is not provided by the lender. It also prohibits use of non-public loan information to solicit business by anyone other than the lender with the business relationship with the customer or that lender's affiliates. The purpose of the new law is to outlaw misleading communications designed to appear to be solicitations from the

lender for additional business from a loan customer. It permits the lender to seek

injunctive relief in addition to any actual damages plus attorneys' fees. The law goes into effect on July 1, 2008.

Payable-at-Death Accounts - HB 3023: This bill amends the payable-at-death statute (Miss. Code §81-5-62) to allow a revocable trust evidenced by a written trust agreement to be a beneficiary of a POD account. Upon death of the owner, the funds can be paid over to the trust on presentation of an affidavit from the trustee stating the name of the trust, the names of the current trustees, and that the trust is still in existence. Current law has been interpreted to require that such beneficiaries be natural persons. This change will be effective July 1, 2008.

Duties of Fiduciaries for Compliance with Environmental Laws - HB 319: This bill which

has been approved by the Governor removes the July 1, 2008 repealer and makes permanent existing statutes (Miss. Code §§91-7-47, 91-7-63, 91-9-9, 91-9-107, and 91-13-15) giving authority to a fiduciary (e.g. executor, administrator, trustee, guardian or conservator) to comply with environmental laws, permit the cost of compliance to be charged to the trust or estate, protecting the fiduciary from individual liability for environmental conditions that might fall to an owner or operator of the property, and protecting the fiduciary from potential liability for reduction in value of the trust or estate property resulting from compliance with environmental laws.

Formatting Standards for Recording Documents-HB 475: This legislation will require that documents such as deeds and deeds of trust filed with the Chancery Clerk meet certain formatting standards. Documents not in compliance with the new standards would require an additional recording fee of \$10.00. The new formatting standards will require all documents to be recorded other than exempt documents and plats or surveys or similar drawings:

- Be printed only on one side of the paper;
- Be printed or typed in a font no smaller than eight (8) point;
- Be on white paper of not less than 20-pound weight;
- Have text of sufficient color and clarity to ensure that it is readable when reproduced;
- Have all signatures in black or blue ink with the corresponding name typed, printed or stamped beneath the signature;
- The first page of each document or instrument, other than a plat or survey or a drawing related to a plat or survey, must have a top margin of at least three inches of vertical space from left to right which is reserved for the recorder's use. All other margins on the document or instrument shall be a minimum of three-fourths (3/4) of one (1) inch.

- The following information shall be on the first page below the three-inch margin: (a) name, address and telephone number of the document preparer; (b) return address; (c) title of the document; (d) all grantors' names; (e) all grantees' names; (f) addresses and telephone numbers of the grantors and grantees as required by Miss. Code §27-3-51; and (g) the legal description or indexing instructions as required by §89-5-33(3) (and if there is insufficient space on the first page for the entire legal description or indexing instruction, immediately succeeding pages must be used).

Exempt documents include documents executed before July 1, 2009, military separation documents, certified copies of court or government agency documents, documents where one of the parties is deceased or incapacitated, documents formatted to meet court requirements, federal tax liens and UCC filings. The bill has been sent to the Governor for his approval and, if approved, will have a delayed effective date of July 1, 2009.

Two other bills that affect Chancery Clerk filings were also passed. One, SB 2075, amends §89-5-33 to require preparers of a deed of trust to include indexing instructions in the document to be filed with the clerk. This legislation was approved by the Governor and became effective immediately. The second, HB 943, creates a task force to study uniformity in the real estate recording process. Under this bill, the Mississippi Bankers Association will have a representative on the task force. The task force is required to hold its first meeting not later than June 1, 2008.

Immigration Reform - SB 2988: Titled the "Mississippi Employment Protection Act", this legislation mandates employers use the "E-Verify" system, an internet-based employment eligibility verification program created by the Department of Homeland Security and the Social Security Administration, to verify the Social Security number of every newly hired employee online. Phased in over 3 years, the

law requires all state agencies, contractors and private employers with 250 or more employees to meet the requirements no later than July 1, 2008. Employers with 100 to 249 employees must meet verification requirements no later than July 1, 2009. Employers with 30 to 99 employees must meet the requirements by July 1, 2010, and all employers must comply by July 1, 2011. Governor Barbour signed the bill, but has voiced support for technical changes to ensure it does not create unintended negative consequences. The issue is being studied and revisions could be included in a special session sometime this year.

Miss Breland's Law - SB 2712: Increases penalties for anyone convicted of the fraudulent use of a driver's license or credit or debit card, identity theft, or forgery in connection with an assault, homicide, kidnapping, robbery, carjacking, burglary or larceny. The increased penalties will apply to anyone who uses an identity document or financial instrument obtained through violent crime, regardless of whether they have knowledge of the crime. The bill has been sent to the Governor for approval and, if approved, will become effective July 1, 2008.

Exempt Property - HB 1324: Amends §85-3-1 to add funds contributed to or paid out from the Mississippi Prepaid Affordable College Tuition (MPACT), the Mississippi Affordable College Savings (MACS) or any other 529 college savings plan to the list of property exempt from seizure under execution or attachment. This means that a bank, as a judgment creditor, could not look to these assets to satisfy a judgment. It could also impact a bank's answer to a writ of garnishment on a customer's account if the funds in the account came from one of these sources since a garnishee-defendant has a duty to suggest any applicable exemptions. The bill has been sent to the Governor for approval and, if approved, will become effective July 1, 2008.

Negotiation of Seized Checks and Drafts - SB 2746: This law which is effective July 1, 2008, permits checks, drafts or similar instruments seized under execution or attachment to be endorsed and negotiated by the sheriff or officer executing the writ of attachment with the

proceeds to be applied to satisfaction of the judgment.

<Cliff Harrison>

## **MRCG MAY MEETING TO BE HELD ON MAY 22, 2008**

The MRCG will hold its Quarterly Meeting on May 22, 2008, at the **Mississippi Sports Hall of Fame & Museum Conference Center, 1152 Lakeland Drive, Jackson, Mississippi**. Registration will begin at 9:00 a.m. with the Quarterly Meeting to begin promptly at 9:30 a.m..

The Quarterly Meeting will feature an analysis of the HMDA pricing data for each HMDA reporting bank. Brandon Roberts has performed an analysis which ranks the banks within a state according to both the size and the frequency of rate spread. He has further analyzed the differences in frequency and size of rate spread between minority and white applicants. This information will be made available on a confidential basis to those banks that ask to receive it. The charge for Brandon's analysis is a modest \$150 to receive reports for your 2004, 2005 and 2006 HMDA data. We urge every HMDA reporting bank to take part. Your registration form included with this Quarterly Report contains a space to indicate your desire to receive this important information and your willingness to pay Brandon directly the \$150 charge.

In addition, we will include a discussion of the steps required to begin to prepare your bank's Identity Theft Protection Program required under the newly released Red Flags Guidelines and there will be a presentation on the proposed revisions to RESPA and Regulation X. The lunch hour will provide the usual summary of recent regulatory developments.

As always, the dress code for this occasion is casual, and lunch will be provided. We ask that you fax or e-mail your registration form enclosed with this copy of the *Quarterly Report* to Liz Crabtree no later than **May 12, 2008** so that arrangements for lunch can be finalized. We look forward to seeing you there.

**MRCG COMPLIANCE CALENDAR**

<b>1/31/05</b> - Revised FACT Act Notices Effective	<b>10/01/07</b> - National Defense Authorization Act Usury Provisions Effective
<b>3/29/05</b> - Effective Date for Interagency Guidance on Response Programs for Unauthorized Access to Customer Information	<b>1/1/08</b> – FACT Act Affiliate Marketing Rule Effective
<b>4/8/05</b> - Effective date for OCC Guidelines Establishing Standards for Residential Mortgage Lending Practices	<b>1/1/08</b> – ID Theft Red Flag Guidelines Effective
<b>4/26/05</b> - Joint Guidance on Banking Services to MSB's Issued	<b>4/8/08</b> – Comments due on Fed. Res. HOEPA proposal
<b>7/1/05</b> - Final Rule on Disposal of Consumer Information (FACT Act) effective	<b>5/13/08</b> – Comments due on HUD RESPA proposal
<b>7/1/05</b> - Effective Date for Joint Guidance for Disposal of Consumer Information	<b>5/20/08</b> – Comments due on proposed Flood Q&A
<b>8/1/05</b> -Disclosures re: Opt Out Rights for Credit Or Insurance (FACT Act) Final	<b>5/22/06</b> - Comments due on information request relating to guidelines on accuracy of consumer report information and reinvestigation of disputes
<b>9/1/05</b> - CRA Final Rule Becomes Effective	<b>5/22/08</b> – MRCG May Quarterly Meeting
<b>2/13/06</b> - OFAC Guidelines effective	<b>6/23/08</b> – Comments due on FinCEN proposed changes to CTR exemptions
<b>4/1/06</b> - Deposit insurance limits on retirement accounts increased to \$250,000	<b>7/17/08</b> – MRCG Steering Committee Meeting
<b>4/1/06</b> - Effective date for FACT Act regulations on use of medical information in determining credit eligibility	<b>8/21/08</b> – MRCG August Quarterly Meeting
<b>6/30/06</b> - Effective date for use of new SFHD forms	<b>9/18/08</b> – MRCG Steering Committee Meeting
<b>7/1/06</b> - Effective date for Reg. CC amendments on remotely created checks	<b>9/30/08</b> –Bank “Broker” provisions of GLBA effective
<b>7/1/06</b> - Reg. DD Amendments on Overdraft Privilege Plans Effective	<b>10/1/08</b> – FACT Act Affiliate Marketing Rule Mandatory Compliance Deadline
<b>11/1/06</b> - EPA All Appropriate Inquiries Rule effective	<b>10/1/08</b> – Electronic Disclosure Regulation effective
<b>1/1/07</b> - Mandatory compliance date for Reg. E changes on electronic check conversions, payroll card accounts and ATM surcharge disclosures	<b>11/1/08</b> – Red Flag Guidelines Compliance Mandatory
<b>7/1/07</b> - Reg E Payroll Card Account Provision effective	<b>11/20/08</b> – MRCG November Annual Meeting